UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO, CALIFORNIA

SOUTHERN CALIFORNIA GAS COMPANY

and Case 21–CA–36590

JOHN LEWIS, INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL/UFCW, LOCAL 47C, LOCAL 78C, LOCAL 350C, AND LOCAL 995C

and Case 21–CA–36603

JOHN LEWIS INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL/UFCW, LOCAL 350C AND LOCAL 995C

Steve L. Hernandez, Esq., of Los Angeles, CA, for the General Counsel.
Larry I. Stein, Esq., of Los Angeles, CA, for the Respondent.

DECISION

Statement of the Case

JOSEPH GONTRAM, Administrative Law Judge. This case was tried in Los Angeles, California, on May 16, 2005. The charge in Case 21–CA–36590 was filed by John Lewis of the International Chemical Workers Union Council/UFCW, Locals 47C, 78C, 350C, and 995C (Union or Charging Party)[1] on November 3, 2004 and was amended on January 26, 2005. The charge in Case 21–CA–36603 was filed by the Chemical Workers Union on November 12, 2004.[2] The complaint was issued on January 28, 2005. The complaint charges that Southern California Gas Company (the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by failing and refusing to produce information requested by the Union, information which was allegedly necessary and relevant to the Union's duties as one of two, joint, collective-bargaining representatives of the Respondent's bargaining unit employees. The second union comprising the joint representative of the bargaining unit employees is the Utility Workers Union of America, AFL–CIO (Utility Workers Union; both unions together, the Unions). The questions presented are:

[1] The Union is alternately referred to in the complaint as International Chemical Workers Union Council of the UFCW, AFL–CIO.

[2] All dates are in 2004 unless otherwise indicated.

1. Whether the Respondent is obligated to provide to the Union information relating to the Respondent's agreement to fund a training program for prospective bargaining unit employees, where (a) the agreement was made with only one of the two Unions, and (b) the agreement was made pursuant to the Respondent's settlement of its California Public Utility Commission (CPUC) proceeding.

2. Whether the Respondent is obligated to provide to the Union the personnel file of a bargaining unit member, Joshua Barnes, where (a) Mr. Barnes is a part-time worker who was discharged under a provision of the collective-bargaining agreement that does not allow a protest or grievance, and (b) the Union seeks the file in connection with its protest of Mr. Barnes' discharge.

3. Whether the Respondent is obligated to provide to the Union information relating to the dates on which a bargaining unit member, Jaime Berridy, was on disability, the date he was cleared for return to work, and the date he was certified as being permanent and stationary, where (a) Mr. Berridy is a member of the Utility Workers Union and has not consented to the production of any information, and (b) the Union seeks the information in connection with its processing of a grievance on behalf of a bargaining unit member, Anita Logan.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel and the Respondent,[4] I make the following

Findings of Fact

I. Jurisdiction

The Southern California Gas Company, a corporation, is a public utility engaged in the generation and distribution of natural gas, and maintains a principal place of business located at 555 West Fifth Street, Los Angeles, California. During the 12-month period ending January 26, 2005, a representative period, the Respondent derived gross revenue in excess of $250,000 from its business operations, and purchased and received goods valued in excess of $50,000 directly from points outside the State of California. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent admits and I find that the Unions are labor organizations within the meaning of Section 2(5) of the Act, and that the Unions are the joint, exclusive collective-bargaining representatives of the employees in the appropriate bargaining unit described in section 2.2(A) of the collective-bargaining agreement between the Respondent and the Unions which was effective from April 1, 2002 to December 31, 2004.

[3] The Acting General Counsel's unopposed motion to correct transcript exhibits is granted.

[4] The Acting General Counsel's Motion To Strike Respondent's Post-Hearing Brief is denied. The Respondent filed its brief one business day after the deadline. The Respondent states that it did not read the Acting General Counsel's brief before filing its own brief, and that its late filing was due to excusable neglect. Although the question is not free from doubt, I am exercising my discretion to consider the matters raised by the Respondent in its posthearing brief.

II. Alleged Unfair Labor Practices

The facts are not disputed. The Unions are jointly certified as the exclusive representatives of the employees in the bargaining unit. Under the joint certification, the respondent bargains with a Joint Steering Committee, which consists of approximately 15–20 representatives of the two unions. Although there are several locals and two unions, there is one collective-bargaining agreement. After 6 months of employment,[5] an employee chooses whether to become a member of the Utility Workers Union or the Chemical Workers Union. With respect to bidding for open jobs, the successful bidder is chosen based on the contractual terms, primarily seniority. The successful bidder could be from either union.

The Union's three, unrelated requests for information will be considered in the order presented above.

A. Training Program

The Respondent is a public utility. Periodically, the Respondent is required to justify its cost of service, including rate increases, through a cost-of-service proceeding before the California Public Utilities Commission (CPUC). Parties who have an interest in the case may submit a request to participate in the proceeding. The presiding administrative law judge will decide such requests at a prehearing conference.

In December 2002, the Respondent filed an application with the CPUC for authority to update its gas revenue requirement and base rates. The Respondent notified the Unions of the application and of their opportunity to intervene. The Utility Workers Union and one of its Locals intervened in the proceeding. The Chemical Workers Union did not.

On December 19, 2003, the parties to the rate case proceeding, including the Respondent and the Utility Workers Union, signed a settlement agreement. (R Exh. 1.) In the settlement agreement, the Respondent agreed to join the Western States Utility Workers Industry Apprenticeship and Training Trust Fund, described as a "joint management/union multi-employer training trust fund. The fund will be utilized to further the training programs associated with UWUA represented job classifications within the western United States." Id. pp. 16–17. The Respondent further agreed to provide funding of $500,000 to assist the Utility Workers Union in establishing the Western States Utility Workers Industry Apprenticeship and Training Trust. The Respondent also agreed to hire the first 10 graduates from the training program established by the trust.

After the Union learned of the settlement agreement, it had internal discussions on the impact of the settlement agreement on the Union and its organizing efforts, whether the Union should try to get involved in the training program, or whether they should try to get a similar training program. On August 20, 2004, Lewis sent a letter to the Respondent requesting a copy of the agreement and additional information relating to the training program provisions of the settlement agreement between the Respondent and the Utility Workers Union. The requested information included:

> 1. The amount of any funds to be provided by the Respondent for any apprentice or training program administered by the Utility Workers Union, or any of its affiliated local unions.

[5] This period was recently changed to 30 days.

> 2. A copy of any criteria for eligibility standards for participation in any apprentice or training program, the funding for which, in total or in part, was provided by the Respondent to the Utility Workers Union, or any of its affiliated local unions.
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> 3. A copy of the training curriculum to be utilized in any training or apprentice program the funding for which, in total or in part, will be provided by the Respondent to the Utility Workers Union, or any of its affiliated local unions.
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> 4. Who would be eligible to participate in any training set up by the Utility Workers Union, or any of its affiliated local unions, using funds supplied by Respondent or Sempra?[6]
>
> 5. Has there been a commitment made by Respondent to employ those individuals who successfully complete the apprentice or training program administered by the Utility Workers Union, or any of its affiliated local unions?

(Jt. Exh. 1; consolidated complaint, par. 8.) At the time this letter was sent, a copy of the settlement agreement was available on the Respondent's website. On September 10, the Respondent replied to Lewis' letter by refusing to provide any of the information requested, and by stating that the requested information was not relevant because the CPUC proceeding did not change the provisions of the parties' collective-bargaining agreement. However, the Respondent offered[7] to discuss with Lewis "the process of the proceeding and the subsequent settlement agreement to help clarify any concerns you may have on this issue." (Jt. Exh. 2.) On October 15, Lewis replied to the Respondent's letter by stating that it was willing to meet, but would need to review the requested information before such a meeting. (Jt. Exh. 3.) The Respondent has failed and refused to provide any of the information requested by the Union, although it did advise the Union that the settlement agreement was available on the Respondent's website.

B. The grievance of Joshua Barnes

Joshua Barnes was a part-time meter reader with the Respondent. Barnes is a member of the Union. The Respondent discharged him in late 2003, allegedly in connection with his absence from work after he reported to his National Guard Unit. After Barnes' discharge and after he contacted Sempra Energy Company, Sempra intervened in the matter, with the result that the Respondent reinstated Barnes with backpay.

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[6] The Respondent is a subsidiary of Sempra Energy Company.

[7] The Respondent states in the letter that "I would offer to have a discussion with you. . ." Thus, an offer was not actually made. However, an offer was apparently intended, and the Chemical Workers Union considered that an offer had been made. Accordingly, the findings are consistent with the parties' intent and understanding, notwithstanding the conditional language of the "offer."

The Respondent again discharged Barnes in September 2004. This discharge was made under section 6.3A of the collective-bargaining agreement. Part-time employees, such as Barnes, have the right to grieve discharges under section 6.3B of the collective-bargaining agreement (discharges for misconduct), but have no right to grieve discharges under section 6.3A of the agreement (discharges for unsatisfactory job performance).

On September 5, 2004, Lewis filed a protest or grievance[8] on behalf of Barnes concerning the September discharge.[9] On September 13, Lewis sent a letter to the Respondent requesting a copy of Barnes' personnel file. (Jt. Exh. 7.) Attached to that letter was a handwritten authorization signed by Barnes authorizing the union to obtain a complete copy of his personnel file.

On September 23, Leonard Prymus, Employee Disputes Manager for the Respondent, replied to Lewis' letters of September 5 and 13. Prymus denied the union's request for a hearing on Barnes' grievance and refused to turn over Barnes' personnel file on the ground that Barnes was discharged pursuant to section 6.3A of the collective-bargaining agreement, not section 6.3B, and therefore had no right to union representation. In a letter dated September 25, Lewis explained to Prymus that the same supervisors who were involved in Barnes' earlier termination had harassed Barnes after his reinstatement. Thus, Lewis was seeking Barnes' personnel file in an attempt to determine the real reason for the discharge, including whether Barnes' 2003 discharge and reinstatement had any influence on the 2004 discharge. This determination would affect whether the Union could properly represent Barnes in the grievance and whether Barnes was properly discharged.

After receiving Lewis' letters, Prymus contacted Barnes, told him of the Union's request for his personnel file, and advised Barnes that his personnel file would be sent to him upon his payment of a fee. Prymus subsequently sent the file to Barnes. However, there was no documentation of or reference to Barnes' earlier discharge in late 2003 in the file that Prymus sent to Barnes. In a letter dated October 7, Lewis again explained to Prymus that he was seeking Barnes' complete personnel file, including the information relating to Barnes' 2003 discharge and reinstatement. The Respondent did not provide any further information.

C. The grievance of Anita Logan

Anita Logan is employed by the Respondent at its Alhambra facility and is a member of the Union. In approximately May 2004, Logan submitted a bid for a job opening in the Respondent's Pasadena facility. Her bid was not successful. Jaime Berridy, who had more seniority than Logan, was awarded the job. Berridy is a member of the Utility Workers Union. On May 27, the Union filed a grievance on Logan's behalf.

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[8] The Respondent's and the Union's practice has been to label some claims as grievances and other claims as protests. Despite the labels, the parties do not contend that protests involve different procedures than grievances.

[9] Lewis credibly testified that he filed a protest on behalf of Barnes. Although the General Counsel was unable to present the protest or grievance letter, a similar letter was received in evidence. (Jt. Exh. 6.) That Lewis did file a protest of Barnes' discharge on September 5 is corroborated by Prymus' reply to Lewis' "letters dated September 5 and 13, 2004," in which Prymus also states, "we must deny your request for a protest hearing and copies of the Personnel File." The September 13 letter made no explicit reference to the protest; it simply requested a copy of Barnes' personnel file. Moreover, the Respondent does not dispute that Lewis filed a protest of Barnes' discharge on September 5.

Logan believed that Berridy was on disability at the time he submitted his bid for the Pasadena job, and it is the Union's position that employees on disability are only allowed to bid on jobs they are able to fill. Accordingly, on October 1, 2004, Lewis sent Prymus a letter in which he requested (1) the date Berridy was certified for disability; (2) the date the doctor cleared Berridy for return to work; (3) the date Berridy was certified as being permanent and stationary;[10] and (4) a list of all employees off work and on disability during the past year, and the dates the employees returned to work. (Jt. Exh. 4.)

Prymus refused to provide any of the information Lewis had requested. Prymus claimed that the information was private medical information and that the requested information could not be provided without the consent of all the employees who had been on disability, including Berridy.

Since 1987, the Respondent has regularly provided the Union with a list, by quarter, of all employees who are off work and on disability. The list includes the employees' names, their addresses, and the dates the employees went off work and on disability. The list does not include the dates the employees returned to work or the dates the employees became permanent and stationary.

III. Analysis

"There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967). These duties encompass the union's responsibilities as bargaining representative for employees under the Act. The employer's obligation extends to information involving labor-management relations during the term of an existing collective-bargaining agreement and in preparation for negotiations involving a future contract. The employer's obligation also extends to information in furtherance of, or which would allow the union to decide whether to process, a grievance. Id. at 436; *Bickerstaff Clay Products*, 266 NLRB 983 (1983).

The standard for relevancy is a liberal, "discovery-type standard." *NLRB v. Acme Industrial Co*, supra at 437. Accordingly, information that is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power and Light Co*., 301 NLRB 1104, 1104–1105 (1991). The requested information need not be dispositive of the issue for which it is sought, but need only have some bearing on it. Id. at 1105. "An employer must furnish information that is of even probable or potential relevance to the union's duties." *Conrock Co*., 263 NLRB 1293, 1294 (1982).

Information pertaining to employees within the bargaining unit is presumptively relevant. *Postal Service*, 332 NLRB 635 (2000). On the other hand, the union must show the relevance of information that does not concern employees in the bargaining unit. In keeping with the liberal standard of relevance, this burden is not a heavy one and only requires the union to demonstrate more than a mere suspicion of the matter for which the information is sought. *Sheraton Hartford Hotel*, 289 NLRB 463 (1988).

[10] "Permanent and stationary" was not fully explained at the hearing, but Lewis did explain that the Union and the Respondent have disputed the bidding rights of employees who have been placed on "permanent and stationary." (Tr. 34–35.)

A. Training program.

The training program not only involved funding of a training trust for the benefit of the Utility Workers Union, but also involved a program administered by the Utility Workers Union from which the Respondent agreed to hire graduates. Thus, the program did concern employees in the bargaining unit, both because it provided funds for their bargaining representative to train potential members, and because the training program involved the source and placement of accretions to the unit. Moreover, the Union wanted to address the possibility of obtaining a training trust and program similar to the one that the Respondent had partnered with the Utility Workers Union. See *Crest Litho, Inc*., 308 NLRB 108 (1992) (the funding of benefit funds, such as training funds, is a mandatory subject of bargaining); *Allied Mechanical Services,* 332 NLRB 1600 (2001).

By virtue of the CPUC settlement agreement, the Respondent is providing substantial assistance to only one of two, joint exclusive bargaining representatives of its employees. The Union is not seeking to invalidate that settlement agreement or to intervene in the CPUC proceeding or to obtain information for another CPUC proceeding. It is attempting to learn relevant aspects of the training program so that it can make a determination whether to seek a similar or different program, or no program at all.

The Respondent makes no claim that the CPUC proceeding is confidential or that the requested information is confidential. Rather, the Respondent argues that CPUC proceedings are not mandatory subjects of bargaining, and failure to provide information concerning those proceedings is not an unfair labor practice. This argument misses the point. The Union's information request concerns the training program, not the CPUC proceeding. The Respondent agreed to fund and join a training trust and to hire graduates from the trust's training program. The mere fact that the Respondent made its agreement pursuant to a settlement of a CPUC proceeding, rather than in a collective-bargaining agreement, does not insulate that training program from disclosure to the employees' bargaining representative.

The Respondent also argues that the Board has never ruled whether sponsorship of an apprenticeship program is a mandatory subject of bargaining, citing *Building Trades Employers' Educational Assoc. v. McGowan*, 311 F.3d 501, 512 (2d Cir. 2002). The Respondent further contends that the facts in the present case warrant a finding that its sponsorship of the training program is a permissive subject of bargaining. However, the Respondent's argument does not prove enough. The Respondent has done more than sponsor a training program with the Utility Workers Union. The Respondent has funded the training program, it has joined the trust that administers the program, and it has agreed to hire graduates from the program. Thus, whether sponsorship of an apprenticeship program has been determined to be a mandatory subject of bargaining is inapposite to the present case where the Respondent has done so much more.

The Respondent's funding of the training program, without more, would render the program a mandatory subject of bargaining. See, e.g., *Crest Litho, Inc*., supra; *Allied Mechanical Services, Inc*., supra. Besides, apprenticeship and training are mandatory subjects of collective bargaining. *E.g*., *DFV Electric Corp*., 306 NLRB 24, 25 (1992). Moreover, even where a union is simply preparing for contract negotiations, the Respondent must furnish the union with sufficient information, on request, to enable it to represent employees adequately in contract negotiations. *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 68 (3d Cir. 1965); *J. I. Case Co. v. NLRB*, 253 F.2d 149, 153–154 (7th Cir. 1958). In the present case, the Union sought the requested information to determine whether it wanted to negotiate a similar or different training program as the program the Respondent was providing to and for the Utility Workers Union.

The Respondent argues that the sole concern expressed by the Union was that graduates of the training program would be more likely to join the Utility Workers Union rather than the Chemical Workers Union, which shows that the requested information did not concern a mandatory subject of bargaining. The Respondent cites no authority for this proposition, and I reject it. Moreover, whether new, bargaining unit employees will join the Union is a matter that affects the continuing viability of the Union and the terms and conditions of employment of the present employees who are members of the Union.

The Respondent also argues that the training program is a "one-shot pilot program," which supports a finding that it is a non-mandatory subject of bargaining. Whether the training program is, in fact, a "one-shot" program is a conclusion that only the Respondent, and perhaps the Utility Workers Union, knows. By refusing to provide the requested information, the Respondent assumes facts to which it, but not the Union, is privy. Also, the Respondent again provides no authority for its contention, and I reject it.

The Respondent argues that the training program is not its exclusive method of recruitment, that it is committed to hire only ten graduates from that program, and accordingly, that the training program is a non-mandatory subject of bargaining. Again, the Respondent provides no support for this contention, and I reject it. The selection of a source from which to hire employees is a mandatory subject of bargaining. *See McClatchy Newspapers,* 307 NLRB 773, 775 (1992). The Respondent's commitment to hire ten applicants from a dedicated source is not an insignificant number or commitment. The Respondent may hire no graduates from the program beyond its original commitment, or it may hire many subsequent graduates. In either event, the commitment is substantial, and the results could be considerably greater.

The Respondent acknowledges that it has ready access to copies of the settlement agreement. Nevertheless, the Respondent states that it posted the settlement agreement on its website and it advised the Union of this posting. Citing *Cincinnati Steel Castings Co*., 86 NLRB 592 (1949), the Respondent contends that it is not required to produce the information in the form requested by the Union, and its direction that the Union could obtain a copy of the settlement agreement on the Web satisfied its obligation to produce the information. In *Cincinnati Steel Castings*, the company refused to provide the union with a written list of the employees in the bargaining unit, including their wage rates and classifications, but it did orally provide the information sought by the union. The Board held that "the employer is [not] obligated to furnish such information in the exact form requested by the representative. It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining." Id. at 593.

Cincinnati Steel Castings is inapposite because there the company produced the exact information the union sought, but in a different form. Here, the Respondent has not produced the exact information the Union seeks. The Union seeks a copy of the settlement agreement. The agreement is a written document that became an agreement when the parties signed it. The Respondent does not claim that the document posted on its website contains the signatures of the parties. The Union sought the settlement agreement, which necessarily means the agreement containing the signatures of the parties. Thus, the Respondent's website does not contain the agreement sought by the Union.

It may be that the document on the Respondent's website is the exact agreement that contains the parties' signatures, but this is merely an assumption. It may also be that the signed agreement would provide additional assistance to the Union, such as the names of the persons who actually signed the agreement on behalf of the various parties. But the assumption and

speculation are beside the point. The Respondent did not produce the agreement requested by the Union when it referred the Union to a document on the Respondent's website. Moreover, the Respondent has failed to produce any of the additional information relating to the training program that the Union requested in its letter of August 20, 2004.

The Respondent argues that it is not required to produce the information in the exact form requested by the Union. The General Counsel argues that the Respondent is required to produce the information even though the Union could obtain the information from another source. *Bel-Air Bowl, Inc*., 247 NLRB 6, 11 (1980); see also *Kroger Co*., 226 NLRB 512, 513 (1976) ("The union is under no obligation to utilize a burdensome procedure of obtaining desired information where the employer may have such information available in a more convenient form."); *Illinois-American Water Co*., 296 NLRB 715, 724 (1989), enfd. 933 F.2d 1368 (7th Cir. 1991) (even though the requested information is available to the union through other sources, including its own records, an employer is not relieved of its bargaining obligation to supply the requested information to the union in a convenient form). Insofar as the settlement agreement is concerned, the Respondent could have avoided litigating this question by making a copy of the agreement to which it had ready access. It is likely that the Respondent's cost of this aspect of the litigation is substantially in excess of the nominal cost of making a copy of the settlement agreement and sending it to or handing it to the Union. Where compliance would be so simple and effortless, the Respondent's positions are not enhanced by its insistence on litigating the propriety of its actions in this regard. In any event, I need not resolve the apparent conflict between the Respondent's and the General Counsel's respective positions because, as explained above, the Respondent's website does not contain the agreement requested by the Union or the additional information requested by the Union.

The settlement agreement in which the Respondent's and the Utility Workers Union's training program was established, as well as the details regarding the training program, is information relevant and necessary for the Union in its role as the collective-bargaining representative of Respondent's employees. The Respondent violated Section 8(a)(1) and (5) of the Act when it refused to provide this information to the Union.

B. The grievance of Joshua Barnes

Information in furtherance of, or which would allow the union to decide whether to proceed with, a grievance or arbitration must be provided as it falls within the ambit of the parties' duty to bargain. *NLRB v. Acme Industrial Co*., supra. As the Supreme Court explained:

> Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originally initiated as grievances had to be processed through to arbitration, the system would be woefully overburdened. Yet, that is precisely what the respondent's restrictive view would require. It would force the union to take a grievance all the way through to arbitration without providing the opportunity to evaluate the merits of the claim. . . . Nothing in federal labor law requires such a result.

Id. at 438–439. The Union filed a protest or grievance on Barnes' discharge, and it sought his complete personnel file from the Respondent in order to evaluate the merits of that grievance and to determine whether the grievance should be pursued. When the Union made its request for Barnes' personnel file, it provided the Respondent with a release signed by Barnes.

The information requested by the Union concerned a bargaining unit member, and accordingly, the information is relevant. *A-Plus Roofing, Inc*., 295 NLRB 967 (1989). Once this showing of relevance has been made, the employer has the burden to prove a lack of relevance or to provide adequate reasons why the request for information should be denied. Id. The Respondent claims that Barnes' personnel file is not relevant to the Union's duties as the collective-bargaining representative, and it presents several bases in support of that position. First, the Respondent claims that the Union did not have the right to grieve Barnes' discharge because part-time employees are terminable at will. This contention ignores the grievance rights granted to part-time employees by section 6.3(B) of the collective-bargaining agreement, and is rejected.

Second, the Respondent claims that there are safeguards, in addition to the grievance procedure, to minimize the chance of an unfair labor practice. In particular, the Respondent cites its Office of Diversity, which presumably deals with claims of discrimination for reasons other than antiunion animus. It is sufficient to observe that other procedures to vindicate claims unrelated to the collective-bargaining agreement have no impact on the Respondent's statutory obligation to provide relevant information to the Union. Whether these other safeguards would minimize the chance of an unfair labor practice, which is questionable at best, does not diminish the Respondent's collective-bargaining obligation to provide relevant information.

Third, the Respondent claims that Barnes was discharged pursuant to section 6.3(A) of the agreement, dealing with discharges for unsatisfactory performance, and that such discharges of part-time employees are not grievable. The General Counsel replies that Barnes had been discharged in late 2003, he was then reinstated after the intervention of Sempra Energy Company, the Respondent's parent company, but Barnes' supervisors treated him poorly after his reinstatement. Thus, the Union contends that Barnes may not have been discharged for performance, or at least solely for performance, but for a reason associated with his earlier discharge and reinstatement. The Union advised the Respondent of this contention when it requested Barnes' personnel file.

The Respondent's position unilaterally requires the Union to accept, without question or supporting information, the Respondent's bald claim that Barnes was discharged under section 6.3(A) of the collective-bargaining agreement for performance reasons. The Union is entitled to challenge that bald claim, and its request for Barnes' personnel file was made pursuant to that challenge. *See Ohio Power Co*., 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). As the administrative law judge observed in *Taylor Hospital*, 317 NLRB 991, 994 (1995), "If the Union were to accept Respondent's claim without requesting to see available verifying documentation, it would not be properly representing its members." In the present case, the Union is properly representing its members by requesting verifying information on Barnes' discharge.

Fourth, the Respondent states that Barnes' personnel file was sent directly to Barnes, that the Union then had access to the file, and that, in effect, the same result occurred as would have occurred if it had complied with the Union's request.[11] This "no harm-no foul" contention ignores the Union's statutorily protected status as the employee's collective-bargaining representative. The Respondent did not fulfill its obligation by submitting the information to the

[11] However, it is not at all clear that the Respondent provided Barnes with a complete copy of his personnel file because there was no reference in the file provided to Barnes regarding his earlier termination and reinstatement. In any event, whether a complete file was provided is not decided and is irrelevant to the violation found herein.

employee rather than directly to the requesting Union with whom it must bargain in good faith. *Assn. of D.C. Liquor Wholesalers*, 300 NLRB 224, 229 (1990). Barnes' personnel file was relevant and necessary to the Union's performance of its representative obligations. In refusing to comply with the Union's request for information and in dealing directly with the employee, the Respondent compounded its violation of its duty to bargain with the Union. Moreover, it is no defense to an unfair labor practice charge to claim that the Respondent committed another unfair labor practice charge. *See Bomat Plumbing & Heating*, 131 NLRB 1243, 1246 (1961) ("One unfair labor practice does not excuse another.")

The Respondent claims that the Union's request for information in the possession of its parent corporation, Sempra, is improper and irrelevant. The employer has a duty to request any information not in its possession from its parent corporation and to show that its request has been refused. *Arch of West Virginia*, 304 NLRB 1089 (1991). Accordingly, the Respondent's contention, that the Union's request for information in the possession of Sempra Energy Company is improper and irrelevant, is without merit.

It is neither necessary nor proper to address the merits of the parties' conflicting contentions of the reason or reasons concerning Barnes' discharge. The reason for Barnes' discharge is a matter to be resolved in a grievance, if it is pursued, or arbitration. The requested information is relevant to the grievance, the Respondent has not met its burden of proving that the information is not relevant, and it has provided no other reasons why the information should not be provided to the Union. Accordingly, the Respondent violated Section 8(a)(1) and (5) of the Act when it refused the Union's request for a complete copy of Barnes' personnel file.

C. The Grievance of Anita Logan

Substantial claims of confidentiality may justify conditional or redacted disclosure of otherwise relevant information. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); *Detroit Newspaper Agency*, 317 NLRB 1071 (1995). In resolving a claim of confidentiality, the Board first determines if the employer has established a "substantial and legitimate" confidentiality interest in the information, and then balances that interest against the union's need for the information. *Minnesota Mining & Mfg. Co*., 261 NLRB 27, 30 (1982), enfd. sub nom. *Oil Workers v. NLRB*, 711 F.2d 348 (DC Cir. 1983). The party asserting confidentiality has the burden of proving it. *Pennsylvania Power & Light Co*., supra. Moreover, blanket claims of confidentiality will not be upheld, and the party asserting confidentiality has a duty to seek an accommodation that addresses both its concerns and its bargaining obligation. *Detroit Newspaper Agency*, supra at 1072; *Pennsylvania Power and Light Co*., supra at 1105.

The Respondent has failed to meet its initial burden of proving a substantial and legitimate confidentiality interest in the information. The Union requested no medical information about Berridy or other employees. The Union sought information on Berridy's disability status, but no information on his medical condition or why he was on disability status. Moreover, the Respondent has demonstrated its lack of a confidentiality interest in this information by regularly providing to the Union since 1987 information on the disability status of its employees. This nonconfidential information includes the names and addresses of employees who are placed on disability, and there is no evidence of any conditions on the disclosure of this disability information nor any evidence that the Respondent or the employees considered the information to be confidential. The Union seeks herein the date Berridy was placed on disability (which had already been provided to the Union in the Respondent's quarterly report, and thus could hardly be confidential), and additional information relating to his disability status, such as the date he was cleared to return to work and the date he was certified as being permanent and stationary. This latter information is not confidential because (1) it is not medical information, (2) it is closely

related and similar to the nonconfidential, disability information provided to the Union on a quarterly basis, and (3) the information is open to all employees and management, at least by inference, because it would be reflected by Berridy's return to work at his same or a different job.

The Respondent has also failed to establish a substantial and legitimate confidentiality interest in the requested information pertaining to other employees. As noted, on a quarterly basis, the Respondent provides to the Union the names and addresses of employees on disability. The Union herein seeks the dates those employees returned to work, and this information has not been shown to be medical information, or confidential, or substantially different from the nonconfidential information voluntarily provided to the Union.

The Respondent argues that the Union should have the burden of proving the relevance of the requested information even though the information concerns a member of the bargaining unit. This argument is based on the Respondent's claim that the Union is seeking the information to use in connection with a grievance proceeding, which, if successful, would result in Logan obtaining the job that the Respondent had awarded to Berridy. Because the information would not be helpful to Berridy, the Respondent argues it is not relevant. The Respondent offers no authority for this contention, which is without merit. The Board's placement of the burden of proof is a function of the relevance of the information, not on whether another employee could be adversely affected by the information. The requested information concerns a bargaining unit member and is sought in connection with a grievance on behalf of another bargaining unit member. Accordingly, the information is presumptively relevant, and this relevance is not affected by the chance that another bargaining unit member might object to its production. *See Wayne Memorial Hospital Assn*., 322 NLRB 100 (1996); *Pfizer, Inc*., 268 NLRB 916 (1984). Moreover, and without regard to a presumption, I find that the Union has established that the information is relevant.

The Respondent replied to the Union's request for information by requiring the Union to obtain a release from Berridy. Of course, Berridy has not provided a release, which is hardly surprising since the Union was challenging his selection for the position over Logan. Conditioning the turnover of the requested information on Berridy's consent and release is unreasonable. The information is directly relevant to the Union's determination of whether Berridy rather than Logan was properly selected for the job they both bid on. In addition, the information is not confidential, and the Respondent's failure to produce the information in response to the Union's request violated its bargaining duty under Section 8(a)(1) and (5).

Moreover, if the information were deemed to be confidential, "the Board is required to balance a union's need for the information against any 'legitimate and substantial' confidentiality interests established by the employer." *Pennsylvania Power & Light Co*., supra at 1105. I find that the relevance of the requested information to the Union's determination of whether to pursue the grievance on Logan's behalf outweighs the limited confidentiality interest in the information.

The Respondent contends that the information is not relevant because the Union's theory in Logan's grievance has no merit. However, "the Board, in passing on an information request, is not concerned with the merits of the grievance." *Pfizer, Inc*., supra at 918. The Respondent also contends that the Union's position in Logan's grievance violates the Americans with Disabilities Act, 42 U.S.C. sec. 12101, et seq. Since a worker's qualification for disability status with the Respondent is not necessarily coterminous with the definition of a disabled person under the federal statute, the Respondent's contention appears to be misplaced. Nevertheless, the contention may not be considered in this proceeding. *Pfizer, Inc*.,

supra.

In conclusion, the Respondent has failed and refused to furnish the Union all of the information requested by the Union, including (1) information requested in its letter of August 20, 2004 relating to the training program; (2) Joshua Barnes' complete personnel file requested in the Union's letter of September 13, 2004; and (3) information relating to the grievance of Anita Logan requested in the Union's letter of October 1, 2004, which is necessary for and relevant to the Union's performance of its statutory duties and responsibilities as the employees' collective-bargaining representative. By doing so, the Respondent violated Section 8(a)(1) and (5).

Conclusions of Law

1. Respondent, Southern California Gas Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Chemical Workers Union Council/UFCW, Local 47C, Local 78C, Local 350C, and Local 995C are labor organizations within the meaning of Section 2(5) of the Act.

3. The Union is the joint, exclusive collective-bargaining representative of the employees in the appropriate unit described in section 2.2(A) of the collective-bargaining agreement between the Respondent and the Unions, which was effective from April 1, 2002 to December 31, 2004.

4. The Respondent violated Section 8(a)(1) and (5) of the Act because the Respondent failed and refused to bargain in good faith with the Union as the joint, exclusive bargaining representative of the employees in the above appropriate unit by refusing to provide to the Union all of the information requested by the Union, including (1) information requested in the Union's letter of August 20, 2004 relating to the training program; (2) Joshua Barnes' complete personnel file requested in the Union's letter of September 13, 2004; and (3) information relating to the grievance of Anita Logan requested in the Union's letter of October 1, 2004, information which is necessary for and relevant to the Union's performance of its statutory duties and responsibilities as the employees' collective-bargaining representative.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent will be directed to turn over to the Union the requested information described in this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Southern California Gas Company, a corporation, with a principal place of business located at 555 West Fifth Street, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union as the joint, exclusive bargaining representative of its employees in the appropriate bargaining unit described above by failing and refusing to furnish the Union with the information described in this decision.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide and give to the Union all of the information requested by the Union, including (1) information requested in the Union's letter of August 20, 2004 relating to the training program; (2) Joshua Barnes' complete personnel file requested in the Union's letter of September 13, 2004; and (3) information relating to the grievance of Anita Logan requested in the Union's letter of October 1, 2004.

(b) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 20, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated:

Joseph Gontram
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

In recognition of these rights, we hereby notify employees that:

WE WILL NOT refuse to bargain collectively and in good faith with the Chemical Workers Union Council/UFCW, Local 47C, Local 78C, Local 350C, and Local 995C (the Union) by refusing to give the Union information that it needs to represent you.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the information it requested regarding the training program agreed to between the Southern California Gas Company and the Utility Workers of America, AFL–CIO.

WE WILL provide the Union with the information it requested in connection with its processing of the grievance or protest on behalf of Joshua Barnes.

WE WILL provide the Union with the information requested in connection with its processing of the grievance on behalf of Anita Logan.

Southern California Gas Company

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor

Los Angeles, California 90017-5449

Hours: 8:30 a.m. to 5 p.m.

213-894-5200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.